

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

IN THE MATTER OF:) Case No: B-1180362 C-13D
ERIC SHAWN AMOS,)
)
Debtor(s))

)

OBJECTION BY STANDING TRUSTEE TO CONFIRMATION OF PLAN

NOW COMES Richard M. Hutson, II, Standing Trustee (“Trustee”) and respectfully objects to confirmation of the Debtor’s plan pursuant to 11 U.S.C. §1325(b) and shows unto the Court the following:

1. The Debtor filed a petition under Title 11 of the United States Code, Chapter 13, on February 28, 2011, in the United States Bankruptcy Court for the Middle District of North Carolina.
2. On February 28, 2011, Richard M. Hutson, II, was appointed as Trustee.
3. This Court has proper and personal jurisdiction of the subject matter hereof and over the parties pursuant to 28 U.S.C. §§151, 157 and 1334, and the Standing Order entered by the United States District Court for the Middle District of North Carolina and this is a core proceeding within 28 U.S.C. §157(b).
4. The plan filed by the Debtor proposes a monthly payment of \$74.00 for a period of at least 36 months. There is no dividend proposed to unsecured creditors; in fact, the only expense scheduled to be paid through the plan is the attorney fee. There is listed unsecured debt of \$23,606.69 in Schedule “F”.
5. The Debtor has filed with the petition a Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income, known as Official Form B22C (“Form B22C”). The Debtor lists current monthly income (“CMI”) in Form B22C of approximately \$2,946.51.
6. Because the Debtor’s CMI does not exceed the median income figure for a family of the same size in North Carolina, the Debtor’s reasonable and necessary expenses are calculated using Schedules I and J.
7. According to Schedule I, the Debtor works at Triangle Orthopaedic Associates and has been there for 17 years. Although no dependents are listed on Schedule I, the Debtor testified at the creditor’s meeting that he is the father of two children.

8. On Schedule J, the Debtor lists monthly expenses, including the plan payment, of \$2,590.56, which includes \$300.00 per month for children's school and sports activities.
9. The Trustee objects to confirmation of the Debtor's plan in that the Debtor may not be devoting all of his projected disposable income to fund the plan pursuant to 11 U.S.C. §1325(b). The Trustee requires evidence of the \$300.00 per month expense for school and sports activities, particularly in light of the minimal plan payment of \$74.00 per month.

WHEREFORE, the Trustee prays the Court for an Order as follows:

1. That the Debtor's plan not be confirmed in that the plan does not comply with the provisions of the Bankruptcy Code, specifically 11 U.S.C. §1325(b), and the case be dismissed for cause pursuant to 11 U.S.C. §1307; or,
2. For such other and further relief as the Court may deem just or proper.

This the 13th day of April, 2011.

s/Benjamin E. Lovell
Benjamin E. Lovell
Attorney for the Trustee
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P.O. Box 3613
Durham, N.C. 27702
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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing document upon John T. Orcutt, Esq., 6616-203 Six Forks Rd., Raleigh, NC 27615, Eric S. Amos, 507 Stonelick Dr., Durham, NC 27703, and Michael D. West, Esq., U.S. Bankruptcy Administrator, PO Box 1828, Greensboro, NC 27402 by depositing a copy of same in the United States Mail, postage prepaid, and in the manner prescribed by Rule 5 of the Federal Rules of Civil Procedure.

This 13th day of April, 2011.

s/Benjamin E. Lovell

Benjamin E. Lovell, Esq.

Attorney for the Standing Trustee